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PART II—Section 2

Bills and Reports of Select Committees on Bills

PARLIAMENT OF INDIA

The following Bills were introduced in Parliament on the 19th April, 1951:—

BILL No. 41 OF 1951

A Bill further to amend the Employment of Children Act, 1938.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Employment of Children (Amendment) Act, 1951.

2. Amendment of long title and preamble, Act XXVI of 1938.—In the long title of, and the preamble to, the Employment of Children Act, 1938 (hereinafter referred to as the principal Act), for the words “the admission of children to”, the words “the employment of children in” shall be substituted.

3. Amendment of section 2, Act XXVI of 1938.—In section 2 of the principal Act, after clause (b), the following clause shall be inserted, namely:—

“(bb) “port authority” means a body of port commissioners or other authority administering a port;”.

4. Amendment of section 3, Act XXVI of 1938.—In section 3 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

“(1) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation—

(a) connected with the transport of passengers, goods or mails by railway, or

(b) connected with a port authority within the limits of any port.

(2) No child who has completed his fifteenth year but has not completed his seventeenth year shall be employed or permitted to work in any occupation referred to in sub-section (1), unless the periods of work of such child for any day are so fixed as to allow an interval of rest for at least twelve consecutive hours which shall include at least such seven consecutive hours between 10 P.M. and 7 A.M. as may be prescribed:

Provided that nothing in this sub-section shall apply to any child referred to herein while employed or permitted to work in such circumstances and in accordance with such conditions as may be prescribed in any occupation aforesaid either as an apprentice or for the purpose of receiving vocational training therein:

Provided further that the competent authority may, where it is of opinion that an emergency has arisen and the public interest so requires, by notification in the Official Gazette, declare that the provisions of this sub-section shall not be in operation for such period as may be specified in the notification."

5. Insertion of new sections 3D and 3E in Act XXVI of 1938.—After section 3C of the principal Act, the following sections shall be inserted, namely:—

3D. Maintenance of register.—There shall be maintained by every employer, in respect of children employed or permitted to work in pursuance of sub-section (2) of section 3 in any occupation referred to in sub-section (1) of that section, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such occupation, showing—

- (a) the name and date of birth of every child under seventeen years of age so employed or permitted to work;
- (b) the periods of work of any such child and the intervals of rest to which he is entitled;
- (c) the nature of work of any such child; and
- (d) such other particulars as may be prescribed.

3E. Display of notice containing abstract of sections 3 and 4.—Every railway administration and every port authority shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port, as the case may be, a notice in such Indian language or languages as may be prescribed and in the English language containing an abstract of sub-sections (1) and (2) of section 3 and section 4 of this Act.

Explanation.—In this section—

“‘railway administration’ has the meaning assigned to it in the Indian Railways Act, 1890 (IX of 1890).”

6. Substitution of new section for section 4 in Act XXVI of 1938.—For section 4 of the principal Act, the following section shall be substituted, namely:—

“4. Penalty.—Whoever—

- (a) employs any child or permits any child to work in contravention of the provisions of section 3; or

(b) fails to give notice as required by section 3B; or
 (c) fails to maintain a register as required by section 3D or makes any false entry in any such register;
 shall be punishable with fine which may extend to five hundred rupees."

7. Amendment of section 7, Act XXVI of 1938.—In sub-section (2) of section 7 of the principal Act—

(i) the word "and" at the end of clause (a) shall be omitted; and

(ii) after clause (b), the following clauses shall be inserted, namely:—

"(c) fix the seven consecutive hours between 10 P.M. and 7 A.M. for the purpose of sub-section (2) of section 3;

(d) specify the circumstances in which and the conditions subject to which a child may be employed or permitted to work either as an apprentice or for the purpose of receiving vocational training in any occupation referred to in sub-section (1) of section 3;

(e) specify the other particulars which a register maintained under section 3D should contain;

(f) specify the Indian language or languages in which a notice referred to in section 3E shall be published; and

(g) provide for exemption from the provisions of sub-section (2) of section 3 in cases of emergencies which could not have been controlled or foreseen, which are not of a periodical character and which interfere with the normal working of any occupation referred to in sub-section (1) of section 3."

STATEMENT OF OBJECTS AND REASONS

The International Labour Conference at its 31st Session held in 1948 adopted a Convention (No. 90) concerning night work of young persons employed in industry. This Convention, in its application to India, prohibits the employment of young persons during the night in factories, mines, railways and ports. The basic provision in the Convention is that young persons between 15 and 17 years of age should not be employed for a period of at least 12 consecutive hours including an interval of at least seven consecutive hours between 10 P.M. and 7 A.M.

India has ratified the Convention which will come into force in June, 1951. Necessary action to enforce the provisions of the Convention in mines and factories by amending the relevant laws is being taken separately. The only national law regulating the employment of children in railways and ports is the Employment of Children Act, 1938, and the present Bill amends that Act so as to give effect to the provisions of the Convention in respect of railways and ports. This opportunity is also taken to amend the Act with a view to completely prohibit the employment of children below 15 years of age in any occupation in port areas.

JAGJIVAN RAM

NEW DELHI;

The 28th March, 1951.

BILL No. 42 OF 1951

A Bill to regulate the profession of notaries.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Notaries Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;

(b) “legal practitioner” means an advocate, vakil or attorney of the Supreme Court or of any High Court, or a pleader practising in any subordinate civil court;

(c) “notary” means a person appointed as such under this Act:

Provided that for a period of one year from the commencement of this Act it includes also a person who, before such commencement, was appointed a notary public either under the Negotiable Instruments Act, 1881 (XXVI of 1881), or by the Master of Faculties in England, and is, immediately before such commencement, in practice in any part of the territories to which this Act extends;

(d) “prescribed” means prescribed by rules made under this Act;

(e) “Register” means a Register of Notaries maintained by the Government under section 4.

(f) “State Government” in relation to a part C State means the Chief Commissioner.

3. Power to appoint notaries.—The Central Government, for the whole or any part of the territories to which this Act extends, and any State Government, for the whole or any part of the State, may appoint as notaries any legal practitioners or other persons who, in its opinion, are duly qualified to discharge the functions of a notary under this Act.

4. Registers.—(1) The Central Government and every State Government shall maintain, in such form as may be prescribed, a Register of the notaries appointed by that Government and entitled to practise as such under this Act.

(2) Every such Register shall include the following particulars about every notary whose name is entered therein, namely:—

(a) his full name, date of birth, residential and professional address;

(b) the date on which his name is entered in the Register;

(c) his qualifications; and

(d) any other particulars which may be prescribed.

5. Entry of names in the Register and issue or renewal of certificates of practice.—(1) Every notary who intends to practise as such shall, on application to the Government appointing him and payment of the prescribed fee, if any, be entitled—

(a) to have his name entered in the Register maintained by that Government under section 4, and

(b) to a certificate authorising him to practise for a period of three years from the date on which the certificate is issued to him.

(2) Every such notary who wishes to continue to practise after the expiry of the period for which his certificate of practice has been issued under this section shall, on application made to the Government appointing him and payment of the prescribed fee, if any, be entitled to have his certificate of practice renewed for three years at a time.

6. Annual publication of lists of notaries.—The Central Government and every State Government shall, during the month of January each year, publish in the Official Gazette a list of notaries appointed by that Government and in practice at the beginning of that year together with such details pertaining to them as may be prescribed.

7. Seal of notaries.—Every notary shall have and use, as occasion may arise, a seal of such form and design as may be prescribed.

8. Functions of notaries.—(1) Every notary may do all or any of the following acts by virtue of his office, namely:—

(a) verify, authenticate, certify or attest the execution of any instrument;

(b) present any promissory note, hundi or bill of exchange for acceptance or payment;

(c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange under the Negotiable Instruments Act, 1881 (XXVI of 1881);

(d) note and draw up ship's protest and protest relating to demurrage and other commercial matters;

(e) administer oath to, or take affidavit from, any person;

(f) prepare bottomry and respondentia bonds and other mercantile documents;

(g) prepare any instrument relating to movable or immovable property situated in India;

(h) prepare and authenticate any instrument intended to take effect in any country outside India in such form and language as may conform to the law of the place where such deed is intended to operate;

(i) translate, and verify the translation of, any document from one language into another;

(j) any other act which may be prescribed.

(2) No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.

9. Bar of practice without certificate.—(1) Subject to the provisions of this section, no person shall practise as a notary or do any notarial act under the official seal of a notary unless he holds a certificate of practice in force issued to him under section 5:

Provided that the presentation of any promissory note, hundi or bill of exchange for acceptance or payment by the clerk of a notary shall not be deemed to be a notarial act within the meaning of this sub-section.

(2) Nothing contained in sub-section (1) shall, until the expiry of one year from the commencement of this Act, apply to any such person as is referred to in the proviso to clause (c) of section 2.

10. Removal of names from Register.—The Government appointing any notary may, by order, remove from the Register maintained by it under section 4 the name of the notary if he,—

- (a) makes a request to that effect; or
- (b) has not paid any prescribed fee required to be paid by him; or
- (c) is an undischarged insolvent; or
- (d) has been found, upon enquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as a notary.

11. Construction of references to notaries public in other laws.—Any reference to a notary public in any other law shall be construed as a reference to a notary entitled to practise under this Act.

12. Penalty for falsely representing to be a notary, etc.—Any person who—

- (a) falsely represents that he is a notary without being appointed as such, or
 - (b) practises as a notary or does any notarial act in contravention of section 9,
- shall be punishable with fine which may extend to one thousand rupees.

13. Cognizance of offences.—(1) No court shall take cognizance of any offence punishable under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

(2) No magistrate other than a presidency magistrate or a magistrate of the first class shall try an offence punishable under this Act.

14. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form and manner in which applications for appointment as a notary may be made and the disposal of such applications;
- (b) the certificates, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish;

(c) the fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, and exemption from such fees in specified classes of cases;

(d) the fees payable to a notary for doing any notarial act;

(e) the form of Registers and the particulars to be entered therein;

(f) the form and design of the seal of a notary;

(g) the manner in which inquiries into allegations of professional or other misconduct of notaries may be made;

(h) the acts which a notary may do in addition to those specified in section 8;

(i) any other matter which has to be, or may be, prescribed.

15. Repeal.—Chapter XVII of the Negotiable Instruments Act, 1881 (XXVI of 1881), is hereby repealed.

THE STATEMENT OF OBJECTS AND REASONS

Under section 138 of the Negotiable Instruments Act, 1881, the Government of India have the power to appoint notaries public, but only for the limited purpose of performing functions under that Act. By virtue of an ancient English Statute, the Master of Faculties in England used to appoint notaries public in India for performing all recognised notarial functions, but it is no longer appropriate that persons in this country who wish to function as notaries should derive their authority from an institution in the United Kingdom.

The object of the present Bill is to empower the Central and State Governments to appoint notaries, not only for the limited purposes of the Negotiable Instruments Act, but generally for all recognised notarial purposes, and to regulate the profession of such notaries.

B. R. AMBEDKAR

NEW DELHI;

The 16th April, 1951.

M. N. KAUL,

Secretary.

